IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No 120 of 2001.

Judgment reserved on 28.12.2006.

Date of decision 9.1.2007

Trilok Singh **….Petitioner.**

Versus

H.R.T.C. Ltd. And another **…..Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr. Rajiv Sharma, Sr. Advocate, with Mr. Surinder Sharma, Advocate.**

For the Respondents: **Mr. Ashok Sharma, Advocate.**

Dev Darshan Sud, J.

The petitioner is aggrieved by the action of the respondents in not being paid wages for over time in accordance with the provisions of the Motor Transport Workers Act, 1961 (hereafter referred to as the Act of 1961). A petition under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereafter referred to as the Act) was filed by the petitioner before the Labour Court in which the petitioner had claimed a sum of Rs.36,837.40. The claim of the petitioner is based on the provisions of Section 26 of the Motor Transport Workers Act, 1961.

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

The learned Court, framed the following issues on the pleadings of the parties:

1. **Whether the applicant is entitled to a sum of Rs.36837/- from the respondent on account of the arrear of over time allowance for the period from 1.6.1991 to 31.3.1994? OPA.**
2. **Relief.**

On issue No. 1, the learned Court below held that "there is no dispute that over time payment is to be calculated as per the Motor Transport Workers Act, 1961. The contention of the petition is that whatever actual over time he has spent on duty is verified duly by the Adda Incharge and the duty hours of over time have been calculated by him on that basis in the Annexure-A. The record from Adda Incharge was also summoned and has been exhibited as Ex.PX. This pertains from June, 1991 to 30.9.1994 and after comparing this record with Annexure A-1, it is clear that the working hours mentioned by the petitioner in Ex.PA tallies with column 3 of this document PX." However, while disposing of the petition, the learned Court has held that the instructions on which reliance has been placed by the HRTC which have been issued on 8.1.1993 are, in no way, contradictory to the provisions of the Motor Vehicles Act. According to these instructions, the petitioner was not entitled

to the claim of over time on the basis of the number of hours submitted by him, but for lesser number of hours put in by him. The petition, therefore, was allowed wherein claim for 1218 ½ hours was allowed, instead of 1835 ½ as claimed by the petitioner.

The petitioner has based his claim on the provisions of the Motor Transport Workers Act, 1961. According to him, extra wages for overtime are governed by Section 26 of the Act which inter alia provides that where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first proviso to Section 13 or where he is required to work on any day of rest under sub-section (2) of Section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.

Section 13 prohibits assignment of duties for more than eight hours in any day and forty-eight hours in a week. The proviso to the Section, as aforesaid, postulates that where any worker is engaged in any motor transport service on long distance routes etc., or on such festive occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week.

The prescribed has been defined under Section 2(i), which means prescribed by the rules made under this Act.

Learned counsel for the petitioner submits that the Labour Court was not correct in holding that the claim of the petitioner could be determined in terms of the Instructions which have been issued by the Himachal Road Transport Corporation and that the learned Court below was in error in holding that these Instructions superseded the statutory provisions of the Act, when such instructions did not have any statutory support. He has placed reliance on two judgments, namely Mandegam Radhakrishna Reddy versus Sri Bharathi Velu Bus Service and another (1986 (1) LLJ 336), judgment by Full Bench of the Hon'ble High Court of Andhra Pradesh; and Krishan Lal versus Labour Court, Jalandhar, and another (1987 (2) LLJ 110, judgment by Punjab and Haryana High Court, in support of his contention.

Learned counsel appearing for the respondents contended that the claim petition itself was not maintainable and placed reliance on judgment of the High Court of Delhi in Delhi Transport Corporation versus D.D.Gupta and another (1984 (2) LLJ 79). According to the learned counsel, the claim of the petitioner if any could be adjudicated under the Payment of Wages Act and not under the Act.

I have heard the learned counsel appearing for the parties.

Learned counsel for the petitioner further submits that the instruction, on the basis of which reliance is placed, has neither been prescribed in the Act or the Rules. He further states that there is no compliance of Sections 13 and 26 of the Motor Transport Workers Act, 1961.

I am in respectful agreement with the judgment in Radhakrishna Reddy 's case rendered by the Full Bench of the High Court Andhra Pradesh. One of the questions raised before the Court in that case was as to whether proceedings under Section 33-C(2) of the Act were maintainable for claims under the Act of 1961. The Hon'ble Court considered the judgments of various High Courts and the Hon'ble Supreme Court of India on the question of maintainability of proceedings under Section 33-C(2) of the Act and concluded in paragraph 28 as under:

> **"28. The preponderance of judicial opinion is clearly in favour of the view that the provisions of S. 15 read with S. 22 of the Payment of Wages Act do not bar the jurisdiction of the Labour Court under S. 33-C(2) of the Industrial Disputes Act to entertain an application for recovery of wages due to an employee. With respect we agree with the view expressed by the various High Courts and express our disagreement with the**

view taken by the Delhi High Court to the contrary."

Similarly, the High Court of Punjab and Haryana in Krishan Lal's case has held:

> **"7. With due respect to the learned Judges of the Division Bench of the Delhi High Court, I am not inclined to agree with their conclusion. The provisions of Section 25 and 37 of the Motor Transport Workers Act, 1961, do not exclude the applicability of Section 33-C(2) of the Act to a claim made by the workmen for the wages due from the employer. Section 25, no doubt, incorporates a provision by which the Payment of Wages Act is made applicable to the Motor Transport Workers and Section 37 gives over riding effect to those provisions over the provisions of any other law or terms of any award, agreement or contract of service but subject to the exception mentioned in the proviso of Section 37 which, in fact, is quite important. A reading of the said proviso makes it clear that the workman is entitled to the benefit under any award, agreement, contract of service or otherwise which are more favourable to him than those to which he would be entitled under**

> **the Motor Transport Workers Act, 1961. He shall be entitled to those more favourable benefits notwithstanding the provisions to the contrary contained in the said Act…."**

The High Court of Delhi in Delhi Transport Corporation's case has held that no such jurisdiction vests in the Labour Court. This judgment was considered by both the High Court of Andhra Pradesh and Punjab and Haryana High Court. The principles enunciated therein were not accepted by both the Courts. I am in respectful agreement with the principles of law laid down by Full Bench of Andhra Pradesh High Court as also the Punjab and Haryana High Court and cannot persuade myself to follow or accept the opinion expressed by the High Court of Delhi. The objection of the respondents on the question of maintainability is, therefore, rejected.

There is another reason as to why such objection cannot be sustained. The contention regarding the maintainability of the claim petition under Section 33(c) (2) of the Industrial Disputes Act was never raised before the Labour Court nor adjudicated. At this belated stage, this Court cannot adjudicate on this issue. This is another reason to reject the defense put up by the respondents. In reply to the writ petition, again,

no such ground has been taken. Moreover, if the petitioner is relegated to the remedy under Section 15 of the Payment of Wages Act, then the same would be claimed barred by time as a claim for wages under the said provisions is required to be made by the applicant within one year from the date of accrual of the cause of action. In totality, considered from any angle, the objection of the respondents cannot be sustained. The question of limitation was also considered by the High Court of Punjab and Haryana in Krishan Lal's case while rejecting the contention regarding the non maintainability of the proceedings under Section 33-C(2) of the Act.

So far as the number of working hours is concerned, they already stand determined by the Labour Court. Learned counsel appearing for the respondents submitted that the claim is exaggerated and cannot be accepted. I cannot accept this contention urged on behalf of the respondents. Findings of fact which have been arrived at by the learned Labour Court below cannot be re-appreciated in proceedings under Article 226 of the Constitution of India. (See Indian Overseas Bank versus I.O.B. Staff Canteen Workers' Union and another (2004) 4 SCC 245 and P.G.I. of Medical Education & Research, Chandigarh versus Raj Kumar, (2001) 2 SCC 54). The Labour Court has recorded that the number of working hours as sub m9itted by the petitioner are correct.

This has been done after a comparison of the record summoned from the Adda Incharge. No perversity has been pointed out either in the recording of evidence or in the findings.

The writ petition is allowed; the order passed by the Labour Court is modified and set aside to the extent it holds that the claim of the petitioner is to be adjudicated only in terms of the Instructions by the Himachal Pradesh Road Transport Corporation. A direction is issued to the respondents to calculate the wages in terms of the Act as aforesaid and payment be made to the petitioner within a period of four months from today, failing which the amount shall carry interest @ 12% per annum. There shall be no order as to costs.

January 9, 2007. **(Dev Darshan Sud),**
PC. **Judge.**